delivered in parts as he proceeded with his study. The corporation sued on the contract, and the court *held,* (1) the contract void as violating a statute of Wisconsin prohibiting foreign corporations doing business within the state before taking certain preliminary steps, and declaring that every contract made by or on behalf of such corporation shall be void in its behalf; (2) the transaction did not constitute interstate commerce. (DODGE, J., dissents.) *International Text-Book Company* v. *Peterson* (1907), — Wis. —, 113 N. W. Rep. 730.

It is a well recognized principle that a state can pronounce the terms on which a foreign corporation can do business within its borders, providing such regulations do not interfere with interstate commerce. *Paul* v. *Virginia,* 8 Wall. 168. A statute which provides that a corporation cannot sue unless it has taken certain preliminary steps is void only so far as the business interfered with constitutes interstate commerce. *Hargraves Mills* v. *Harden,* 25 Misc. 665; *Haldy* v. *Tomoor-Haldy Co.,* 4 Ohio Dec. 118; *Wolff Dryer Co.* v. *Bigler,* 192 Pa. St. 466; Note 24 L. R. A. 289; *Welton* v. *Missouri,* 91 U. S. 275. It is often very difficult, however, to determine in a particular case whether the transaction constitutes interstate commerce. The rule seems to be that only tangible things which are subject to barter and sale, those commodities that are to be shipped or forwarded from one state to another, constitute such commerce. *Paul* v. *Virginia,* supra; see also 3 MICHIGAN LAW REVIEW, 72, 411. Newspapers may be the subject of interstate commerce. *Preston* v. *Finley,* 72 Fed. 850. But insurance contracts do not constitute such commerce. *Paul* v. *Virginia,* supra. The contracts, in the principal case, resemble insurance contracts, and the provisions for the sale of books and instruments were only ancillary to the main contract of instruction and, therefore, would not constitute interstate commerce.

CONSTITUTIONAL LAW—JUDICIAL POWERS—LEGISLATIVE ACTION OF CITY COUNCIL NOT ENJOINED.—In a suit to enjoin a city council from passing an ordinance repealing a prior ordinance granting a franchise to a street railway company, on the ground of impairment of contract, *held,* that a court of equity has no power to enjoin the passage of such an ordinance which involves the exercise of legislative discretion. *Missouri & K. I. Ry. Co.* v. *City of Olathe* (1907), — C. C., D., Kan. 1st Div. —, 156 Fed. Rep. 625.

This case states it to be a general rule that a municipal corporation can no more be enjoined from the exercise of its legislative power over matters within its jurisdiction and control than can the legislative power of a state be enjoined, the theory being that city ordinances become a portion of the law of the state within the city limits. *Yount* v. *Denning,* 52 Kan. 636. In HIGH ON INJUNCTIONS (3rd ed.), § 1243, the rule is stated: "In the first place, it is unquestionably true that purely legislative acts, such as the passage of resolutions, or the adoption of ordinances by a municipal body, even though alleged to be unconstitutional and void, will not be enjoined." In *New Orleans Waterworks* v. *New Orleans,* 164 U. S. 481, it is held that courts of equity can not interfere with or in advance restrain the discretion of a municipal body while it is in the exercise of powers that are legislative

in their character. Such discretion, whether rightfully or wrongfully exercised, is not subject to interference by the judiciary, *McChord* v. *Louisville & Nashville R. Co.,* 183 U. S. 496, 46 L. Ed. 289. Some expressions employed in the cases cited would indicate that the rule has its limitations. The quotation from HIGH ON INJUNCTIONS speaks of acts "purely legislative, such as the passage of resolutions or the adoption of ordinances." In *Waterworks* v. *New Orleans,* supra, the discretion is not to be reviewed as to acts which are "legislative in their character." In *People* v. *Sturtevant,* 9 N. Y. 263, the mayor and council of the city of New York were held properly enjoined by the superior court from passing an ordinance granting a franchise to a street railway, it being held to be a grant upon condition and not legislative action. The lower court had issued the restraining order (this was in 1852) on the ground that such a use of the streets would constitute a nuisance, which it had power to prevent the council from creating. Want of power and where the mere passage of an ordinance would work irreparable injury have been held to authorize a restraining order. *Spring Valley Waterworks* v. *Bartlett,* 16 Fed. 615; or where the proposed act is ultra vires. *Murphy* v. *East Portland,* 42 Fed. 308. Where a city by authorized taxation had purchased property for a particular purpose, it was enjoined from passing an ordinance authorizing the mayor to convey it. *Roberts* v. *City of Louisville,* 92 Ky. 95, 17 S. W. 216. In *Negus* v. *City of Brooklyn,* 62 How. Prac. 291, a city council was restrained from passing an ordinance over the mayor's veto, their consent alone being insufficient, unconstitutional, a gross perversion of discretion and tending to create a public nuisance. A city council may be enjoined from any unlawful act, but not from an act within its legal discretion. *City of Detroit* v. *Hosmer,* 79 Mich. 384. Where a city threatened to cut off the supply of water to plaintiff's mill in breach of an alleged contract, such threatened action was enjoined, on the ground that when a municipal corporation engages in things not public in their nature, it no longer legislates, but contracts, and is as much bound by its engagements as is a natural person. *Penn. Iron Co.* v. *City of Lancaster,* 25 Penn. Super. 478. It has also been held that equity has jurisdiction of a bill quia timet by a taxpayer to restrain the passage of an ordinance, and as to property owned by the city, the council and city officers generally are considered as trustees, subject to control by courts of equity. The cases cited are sufficient to indicate that while the rule, first announced, is generally accepted, the courts are not agreed as to what is an exercise of legislative discretion. Federal courts are much less prone to issue such restraining orders than are state courts, and no occasion seems to have arisen where the supreme court deemed such an injunction a proper exercise of judicial power.

CONSTITUTIONAL LAW—PRIVILEGES AND IMMUNITIES.—Plaintiff's husband, a citizen and resident of Pennsylvania, was killed by the negligence of the defendant railroad company while operating one of defendant's locomotives in Pennsylvania. Plaintiff, *a citizen of Pennsylvania,* capable of bringing suit as the personal representative of the deceased by the laws of Pennsylvania, brought action in the state court of Ohio on the theory that the Ohio statute